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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,438	08/20/2001	Yoshiharu Matahira	01503/HG	6038

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 01/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY

Office Action Summary

Application No.

09/933,438

Applicant(s)

MATAHIRA ET AL.

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,9 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,9 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Status Application

The request for a continued prosecution received on October 30, 2002 is acknowledged. Claims 1, 3, 5-7, 9, and 11-16 are included in the prosecution of this application. Claims 2, 4, 8, 10, and 17-19 are cancelled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 6 are rejected under 35 U.S.C. 102(a) (e) as being anticipated by Hageman et al (6,420,342).

Hageman et al disclose an oral rehydration drink containing 5g yeast extract and 3 g D-ribose (col. 13, example 3), zinc sulfate (mineral), among other components.

*Note yeast extract inherently contains anserine. US 4,028,184, column 8, lines 29-35, is cited as art of interest.

Response to Arguments

The declaration under 37 CFR 1.132 filed October 3, 2002 is insufficient to overcome 102 art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 5-7, 9, 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al (5,965,596) in view of St. Cyr et al (6,159,942).

Harris et al teach a composition for increasing anaerobic work in tissues and teaches of creatine and beta-alanylhistidine in muscle content, leads to increased muscle duration during exercise (col. 3, lines 35-46). Harris teaches administering chicken broth, which contains anserine and carnosine, to subjects (example 2). Harris teaches the additional use of creatine and carbohydrates, such as sugar, in the composition (claims).

Harris et al does not teach the inclusion of ribose.

St. Cyr et al teaches increasing energy availability in mammals with decreased energy by administering ribose (col. 3, lines 10-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Harris et al and St. Cyr et al since both teach a method and composition of increasing energy levels. One would be motivated to use anserine and ribose in a composition to obtain an additive effect since both reference teach the use of individual components to increase energy level in muscles. In the absence of showing otherwise, it is prima facie obvious to combine two composition each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. Further, since Harris et al teach the use of a sugar, clearly the compatibility of ribose and the dipeptide are seen.

Response to Arguments

The declaration under 37 CFR 1.132 filed October 3, 2002 is insufficient. The declaration shows a significant difference when compared to the control; however a statistical evaluation between ribose by itself and anserine by itself are not seen. Therefore, it is unclear if the values represented are an additive effect of anserine and ribose or a synergistic effect of both components (ribose and anserine). See In re Kerhoven 205 USPQ 1069. Secondly, the declaration does not establish the criticality and unexpected results of anserine versus other similar imidazole dipeptides.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 703-305-2147. The examiner can normally be reached on M-F (7:30-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 709-3080196.

SSG

[Handwritten signature]

January 8, 2003

[Handwritten signature]
MICHAEL G. HARTLEY
PRIMARY EXAMINER